

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Case No. 19-11235 (JPS)
	)	
ERIC MARCUS HENRY, SR., and	)	Chapter 7
PAULETTE DEAN HENRY,	)	
	)	Judge: JESSICA E. PRICE SMITH
Debtors.	)	

**MOTION OF TRUSTEE FOR AUTHORITY TO EMPLOY  
SPECIAL COUNSEL *NUNC PRO TUNC* TO PURSUE A PERSONAL INJURY  
CLAIM ON A CONTINGENCY FEE BASIS**

Robert D. Barr, the Trustee herein, respectfully represents to the Court as follows:

1. Robert D. Barr is the Trustee (the “Trustee”) in the within case, which was commenced by the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code (the “Debtors’ Case”) on March 8, 2019 (the “Petition Date”).

2. Prior to the commencement of the Debtors’ Case, Eric Marcus Henry, Jr., one of the Debtors herein (“Mr. Henry”) owned, asserted, and/or was entitled to assert a personal injury claim (the “Claim”), which arose prior to the Petition Date. The Claim is presently being litigated in federal court, although the parties have negotiated a potential resolution (the “Litigation”).

3. The Claim arises from events that occurred prior to the Petition Date, and is property of the bankruptcy estate pursuant to 11 U.S.C. § 541. The Claim is separate and distinct from a worker’s compensation claim disclosed in the Debtor’s bankruptcy schedules, which is the subject of separate litigation.

4. On October 31, 2020, the Debtors’ Case was reopened for the purpose of pursuing the Claim (which was not initially disclosed as a personal injury claim in the Debtor’s bankruptcy schedules), and finalizing a settlement of the Claim.

5. Prior to the Petition Date, Mr. Henry had employed the law firms of Bashein & Bashein Co., L.P.A. (the “Bashein Firm”) and Frank T. Zobec, Esq. (the “Zobec Firm”), to pursue the Claim (jointly the “Firms”). The Bashein Firm is the lead Firm with respect to litigating the Claim.

6. The Bashein Firm has experience in pursuing and litigating claims of this nature. The Firms are pursuing the Claim on a contingency fee basis.

7. A copy of the prepetition contingency fee agreement between Mr. Henry and the Firms (the “Fee Agreement”) is attached hereto, marked as Exhibit “A,” and incorporated herein by reference. Pursuant to the terms of the Fee Agreement, the Firms will receive 40% of any gross recovery, as a complaint has been filed asserting the Claim. The Firms have an agreement to share the fees, as set forth in the Fee Agreement. The Firms are also entitled to reimbursement of expenses.

8. The Trustee hereby requests that he be authorized to employ the Firms on the terms and conditions set forth in the Fee Agreement attached hereto as Exhibit “A,” on a *nunc pro tunc* basis.

9. It would be in the best interests of the bankruptcy estate and creditors if this Court authorizes the employment of the Firms as set forth in the Fee Agreement attached hereto as Exhibit “A,” and authorizes the payment of fees and expenses of such special counsel pursuant to the Agreement.

10. No fees and expenses will be paid to the Firms absent further Order of this Court; and no fees or expenses shall be shared with third parties other than the members or associates of the Bashein Firm and/or the Zobec Firm. To the knowledge and information of the Trustee, based on information provided, the Firms have no interests adverse to the Debtors’ estate and creditors.

Affidavits of Attorney Craig Bashein and Frank Zobec are attached hereto jointly as Exhibit “B” and are incorporated herein by reference.

WHEREFORE, the Trustee prays that his Motion be granted, and that he be authorized to employ the Firms on a *nunc pro tunc* basis, as described above.

Respectfully submitted,

/s/ Robert D. Barr  
Robert D. Barr, Trustee (#0067121)  
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Cleveland, Ohio 44114  
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### **NOTICE**

Pursuant to Local Bankruptcy Rule 9013-1, any objection to this application **must be filed by December 2, 2020**. If no response or objection is timely filed, the Court is authorized to grant the relief without further notice.

/s/ Robert D. Barr  
Robert D. Barr, Trustee

### **CERTIFICATE OF SERVICE**

I certify that on November 18, 2020, a true and correct copy of the foregoing Motion to Employ Special Counsel was served:

**Via the Court’s Electronic Case Filing System on these entities and individuals who are listed on the Court’s Electronic Mail Notice List:**

Robert D. Barr, Trustee, at [barr-trustee@koehler.law](mailto:barr-trustee@koehler.law), [rd@trustesolutions.net](mailto:rd@trustesolutions.net)

William J. Balena, Attorney for Debtors, at [docket@ohbksource.com](mailto:docket@ohbksource.com),  
[janet@ohbksource.com](mailto:janet@ohbksource.com)

United States Trustee (Registered address)@usdoj.gov

**And by regular U.S. mail, postage prepaid, to:**

W. Craig Bashein, Esq.  
Bashein & Bashein Co., L.P.A.  
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Suite 410  
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/s/ Robert D. Barr  
Robert D. Barr, Trustee